

IN THE CIRCUIT COURT OF MACON COUNTY, ALABAMA

MICHAEL PERRY SMITH, BETTY  
A. SMITH, individually and as next  
friend of LILLIAN A. SMITH, a  
minor,

Plaintiffs,

v.

MELANIE AMANDA HINSON AND  
LIBERTY MUTUAL FIRE  
INSURANCE COMPANY,

Defendants.

CV 05-124

COMPLAINT

COME NOW the plaintiffs in the above-styled matter and for their complaint  
against defendants say as follows:

PARTIES, JURISIDCTION AND VENUE

1. The Plaintiffs, Michael Perry Smith, Betty A. Smith and Lillian A. Smith are individuals who reside in Hot Springs, Arkansas and who were injured in an automobile accident that occurred in Macon County, Alabama. Betty A. Smith brings this action individually and as next friend of Lillian A. Smith, a minor.
2. Defendant, Melanie Amanda Hinson, is an individual and resident of Lee County, Alabama. Defendant Hinson caused the automobile accident which occurred in Macon County, Alabama and which injured the Plaintiffs.
3. Defendant Liberty Mutual Fire Insurance Company ("Liberty Mutual") is the uninsured/underinsured motorist ("UM") insurance carrier for the Plaintiffs. Defendant Liberty Mutual is a foreign corporation doing business in Macon County, Alabama.

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FILED IN  
CIRCUIT CLERK'S OFFICE  
MACON COUNTY, ALA.

4. This Court has jurisdiction over this action because the amount in issue exceeds \$10,000.

5. Venue is proper in this action under ALA. CODE § 6-3-7 and Ala.R.Civ.P. 82(c) because a substantial portion of the wrongful acts or omissions complained of herein occurred in Macon County, Alabama.

### FACTS

6. On or about July 19, 2003, Plaintiffs were in a vehicle traveling south on Interstate 85 in Macon County, Alabama.

7. Defendant Hinson was driving a vehicle traveling south on Interstate 85 in Macon County, Alabama. Defendant Hinson lost control of her vehicle and collided with the vehicle in which Plaintiffs were in. The collision caused Plaintiffs' vehicle to spin out of control, overturn and land in a ditch.

8. Defendant Hinson's vehicle was not safe for travel under the weather and/or environmental conditions. In addition, Defendant Hinson was driving her vehicle in a manner and/or speed that was not safe for travel under the weather and/or environmental conditions.

### NEGLIGENCE AND WANTONNESS

9. Defendant Hinson owed a duty to Plaintiffs to properly maintain her vehicle before driving on the road.

10. Defendant Hinson owed a duty to Plaintiffs to drive her vehicle in a manner in compliance with the rules of the road. Defendant Hinson further owed a duty to Plaintiffs to drive in a manner and speed appropriate for weather and environmental conditions so as not to endanger other drivers and passengers, including the Plaintiffs.

11. Defendant Hinson breached those duties by failing to properly maintain her vehicle, failing to follow the rules of the road and failing to operate her vehicle in a manner and speed appropriate for the weather and environmental conditions. Defendant Hinson knew or reasonably should have known that her vehicle was not properly maintained and that she was operating her vehicle in an unsafe manner; nonetheless, Defendant Hinson intentionally, recklessly, and/or negligently disregarded the safety of others, including Plaintiffs, by proceeding as she did.

12. As a result of these breaches of duty, Plaintiffs were damaged in that their vehicle was damaged and they each suffered physical and emotional injuries. Furthermore, Plaintiffs have lost wages and the use of their vehicle.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs demand judgment against the Defendant Hinson for compensatory damages, including property damage, personal injury, past and future medical costs, lost wages, mental anguish and emotional distress and prejudgment interest in an amount to be determined by a jury. Plaintiffs also demand costs of bringing this action.

#### **BREACH OF CONTRACT/UM CLAIM**

13. Plaintiffs Betty and Michael Smith have an insurance contract with Defendant Liberty Mutual which provides for uninsured and underinsured motorist coverage. Plaintiff Lillian Smith is an additional insured under the policy.

14. Defendant Hinson is an uninsured or underinsured motorist as defined by the contract of insurance between Plaintiffs and Defendant Liberty Mutual.

15. Defendant Liberty Mutual is obligated to pay the Plaintiffs for their injuries and damages as alleged above which were caused by Defendant Hinson.

16. Defendant Liberty Mutual has breached the insurance contract with Plaintiffs.

17. As a consequence of said breach and Liberty Mutual's obligations to Plaintiffs, Plaintiffs have been damaged.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs demand judgment against Liberty Mutual for compensatory damages, including property damage, personal injury, past and future medical costs, lost wages, mental anguish and stress and prejudgment interest in an amount to be determined by a jury. Plaintiffs also demand costs of bringing this action.

**PLAINTIFFS DEMAND A TRIAL BY STRUCK JURY**

Dated this 17<sup>th</sup> day of June, 2005.



Harlan F. Winn, III (WIN023)  
Michael J. Clemmer (CLE-029)

Attorneys for Plaintiffs

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**PLEASE SERVE DEFENDANTS AS FOLLOWS:**

**VIA CERTIFIED MAIL, RESTRICTED DELIVERY:**

Melanie Amanda Hinson  
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Lot 238  
Auburn, AL 36832

**VIA CERTIFIED MAIL:**

Liberty Mutual Life Insurance Company  
c/o The Corporation Company  
2000 Interstate Park  
Suite 204  
Montgomery, AL 36109

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